

## Article 2C.

### Benefits Payable for Unemployment Compensation.

§ 96-12: Repealed by Session Laws 2013-2, s. 2(a), effective July 1, 2013.

§ 96-12.01: Recodified as G.S. 96-14.14 by Session Laws 2013-2, s. 6, effective July 1, 2013.

§§ 96-12.1 through 96-14: Repealed by Session Laws 2013-2, s. 2(a), effective July 1, 2013.

#### § 96-14.1. Unemployment benefits.

(a) Purpose. – The purpose of this Article is to provide temporary unemployment benefits as required by federal law to an individual who is unemployed through no fault on the part of the individual and who is able, available, and actively seeking work. Benefits are payable on the basis of service, to which section 3309(a)(1) of the Code applies, performed for a governmental entity, a nonprofit organization, and an Indian tribe in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service.

(b) Valid Claim. – To obtain benefits, an individual must file a valid claim for unemployment benefits, register for work, and have a weekly benefit amount calculated pursuant to G.S. 96-14.2(a) that equals or exceeds fifteen dollars (\$15.00). An individual must serve a one-week waiting period for each claim filed, except no waiting period applies under this subsection to a claim for unemployment due directly to a disaster covered by a federal disaster declaration. A valid claim is one that meets the employment and wage standards in this subsection for the individual's base period. A valid claim for a second benefit year is one that meets the employment and wage standards in this subsection since the beginning date of the prior benefit year and before the date the new benefit claim is filed:

- (1) Employment. – The individual has been paid wages in at least two quarters of the individual's base period.
- (2) Wages. – The individual has been paid wages totaling at least six times the average weekly insured wage during the individual's base period. If an individual lacks sufficient base period wages, then the wage standard for that individual is determined using the last four completed calendar quarters immediately preceding the first day of the individual's benefit year. This alternative base period may not be used by an individual in making a claim for benefits in the next benefit year.

(c) Qualification Determination. – An individual's qualification for benefits is determined based on the reason for separation from employment from the individual's bona fide employer. The individual's bona fide employer is the most recent employer for whom the individual began employment for an indefinite duration or a duration of more than 30 consecutive calendar days, regardless of whether work was performed on all of those days. An individual who is disqualified has no right to benefits. An individual who is disqualified may have the disqualification removed if the individual files a valid claim based on employment with a bona fide employer that employed the individual subsequent to the employment that resulted in disqualification. An individual who had a prior disqualification removed may be determined to be disqualified based on the reason for separation from employment from the individual's most recent bona fide employer, and the individual must be otherwise eligible for benefits.

(d) Eligibility for Benefits. – The Division must calculate a weekly benefit amount and determine the duration of benefits for an individual who files a valid claim and qualifies for

benefits. To receive the weekly benefit amount, the Division must find that the individual meets the work search eligibility requirements for each week of the benefit period. An individual who fails to meet the work search requirements for a given week is ineligible to receive a benefit until the condition causing the ineligibility ceases to exist.

(e) Federal Restrictions. – Benefits are not payable for services performed by the following individuals, to the maximum extent allowed by section 3304 of the Code:

- (1) Instructional, research, or principal administrative employees of educational institutions.
- (2) Employees who provide services in any other capacity for an educational institution.
- (3) Individuals who performed services described in either subdivision (1) or (2) of this subsection in an educational institution while in the employ of an educational service agency. The term "educational service agency" has the same meaning as defined in section 3304 of the Code.
- (4) Professional athletes.
- (5) Aliens. (2013-2, s. 5; 2013-224, ss. 12, 19; 2013-391, s. 3; 2015-238, s. 2.10(a); 2017-8, s. 1(c).)

#### **§ 96-14.2. Weekly benefit amount.**

(a) Weekly Benefit Amount. – The weekly benefit amount for an individual who is totally unemployed is an amount equal to the wages paid to the individual in the last two completed quarters of the individual's base period divided by 52 and rounded to the next lower whole dollar. If this amount is less than fifteen dollars (\$15.00), the individual is not eligible for benefits. The weekly benefit amount may not exceed three hundred fifty dollars (\$350.00).

(b) Partial Weekly Benefit Amount. – The weekly benefit amount for an individual who is partially unemployed or part-totally employed is the amount the individual would receive under subsection (a) of this section if the individual were totally unemployed, reduced by the amount of any wages the individual receives in the benefit week in excess of twenty percent (20%) of the benefit amount applicable to total unemployment. If the amount so calculated is not a whole dollar, the amount must be rounded to the next lower whole dollar. Payments received by an individual under a supplemental benefit plan do not affect the computation of the individual's partial weekly benefit.

(c) Retirement Reduction. – The amount of benefits payable to an individual must be reduced as provided in section 3304(a)(15) of the Code. This subsection does not apply to social security retirement benefits.

(d) Income Tax Withholding. – An individual may elect to have federal income tax deducted and withheld from the individual's unemployment benefits in the amount specified in section 3402 of the Code. An individual may elect to have State income tax deducted and withheld from the individual's unemployment benefits in an amount determined by the individual. The individual may change a previously elected withholding status. The amounts deducted and withheld from unemployment benefits remain in the Unemployment Insurance Fund until transferred to the appropriate taxing authority as a payment of income tax. The Division must advise an individual in writing at the time the individual files a claim for unemployment benefits that the benefits paid are subject to federal and State income tax, that requirements exist pertaining to estimated tax payments, and that the individual may elect to have the amounts withheld. (2013-2, s. 5; 2013-224, s. 19; 2013-391, s. 4.)

**§ 96-14.3. Duration of benefits.**

(a) Duration. – The number of weeks an individual is allowed to receive unemployment benefits depends on the seasonal adjusted statewide unemployment rate that applies to the six-month base period in which the claim is filed. One six-month base period begins on January 1 and one six-month base period begins on July 1. For the base period that begins January 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of July, August, and September applies. For the base period that begins July 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of January, February, and March applies. The Division must use the most recent seasonal adjusted unemployment rate determined by the U.S. Department of Labor, Bureau of Labor Statistics, and not the rate as revised in the annual benchmark.

<b>Seasonal Adjusted Unemployment Rate</b>	<b>Number of Weeks</b>
Less than or equal to 5.5%	12
Greater than 5.5% up to 6%	13
Greater than 6% up to 6.5%	14
Greater than 6.5% up to 7%	15
Greater than 7% up to 7.5%	16
Greater than 7.5% up to 8%	17
Greater than 8% up to 8.5%	18
Greater than 8.5% up to 9%	19
Greater than 9%	20

(b) Total Benefits. – The total benefits paid to an individual equals the individual's weekly benefit amount allowed under G.S. 96-14.2 multiplied by the number of weeks allowed under subsection (a) of this section. (2013-2, s. 5; 2013-224, ss. 13, 19; 2015-238, s. 2.8(b).)

**§ 96-14.4:** Repealed by Session Laws 2015-238, s. 2.8(a), effective July 1, 2015.

**§ 96-14.5. Disqualification for good cause not attributable to the employer.**

(a) Determination. – The Division must determine the reason for an individual's separation from work. An individual does not have a right to benefits and is disqualified from receiving benefits if the Division determines that the individual left work for a reason other than good cause attributable to the employer. When an individual leaves work, the burden of showing good cause attributable to the employer rests on the individual and the burden may not be shifted to the employer.

(b) Reduced Work Hours. – When an individual leaves work due solely to a unilateral and permanent reduction in work hours of more than fifty percent (50%) of the customary scheduled full-time work hours in the establishment, plant, or industry in which the individual was employed, the leaving is presumed to be good cause attributable to the employer. The employer may rebut the presumption if the reduction is temporary or was occasioned by malfeasance, misfeasance, or nonfeasance on the part of the individual.

(c) Reduced Rate of Pay. – When an individual leaves work due solely to a unilateral and permanent reduction in the individual's rate of pay of more than fifteen percent (15%), the leaving is presumed to be good cause attributable to the employer. The employer may rebut the

presumption if the reduction is temporary or was occasioned by malfeasance, misfeasance, or nonfeasance on the part of the individual. (2013-2, s. 5; 2013-224, s. 19.)

**§ 96-14.6. Disqualification for misconduct.**

(a) Disqualification. – An individual who the Division determines is unemployed for misconduct connected with the work is disqualified for benefits. The period of disqualification begins with the first day of the first week the individual files a claim for benefits after the misconduct occurs.

(b) Misconduct. – Misconduct connected with the work is either of the following:

- (1) Conduct evincing a willful or wanton disregard of the employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee or has explained orally or in writing to an employee.
- (2) Conduct evincing carelessness or negligence of such degree or recurrence as to manifest an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

(c) Examples. – The following examples are prima facie evidence of misconduct that may be rebutted by the individual making a claim for benefits:

- (1) Violation of the employer's written alcohol or illegal drug policy.
- (2) Reporting to work significantly impaired by alcohol or illegal drugs.
- (3) Consumption of alcohol or illegal drugs on the employer's premises.
- (4) Conviction by a court of competent jurisdiction for manufacturing, selling, or distributing a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) if the offense is related to or connected with an employee's work for the employer or is in violation of a reasonable work rule or policy.
- (5) Termination or suspension from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal drugs if the offense is related to or connected with the employee's work for an employer or is in violation of a reasonable work rule or policy.
- (6) Any physical violence whatsoever related to the employee's work for an employer, including physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public.
- (7) Inappropriate comments or behavior toward supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic that creates a hostile work environment.
- (8) Theft in connection with the employment.
- (9) Forging or falsifying any document or data related to employment, including a previously submitted application for employment.
- (10) Violation of an employer's written absenteeism policy.
- (11) Refusal to perform reasonably assigned work tasks or failure to adequately perform employment duties as evidenced by no fewer than three written reprimands in the 12 months immediately preceding the employee's termination. (2013-2, s. 5; 2013-224, s. 19.)

**§ 96-14.7. Other reasons to be disqualified from receiving benefits.**

(a) Failure to Supply Necessary License. – An individual is disqualified for benefits if the Division determines that the individual is unemployed for failure to possess a license, certificate, permit, bond, or surety that is necessary for the performance of the individual's employment if it was the individual's responsibility to supply the necessary documents and the individual's inability to do so was within the individual's control. The period of disqualification begins with the first day of the first week the individual files a claim for benefits after the individual's failure occurs.

(b) Labor Dispute. – An individual is disqualified for benefits if the Division determines the individual's total or partial unemployment is caused by a labor dispute in active progress at the factory, establishment, or other premises at which the individual is or was last employed or by a labor dispute at another place within this State that is owned or operated by the employer that owns or operates the factory, establishment, or other premises at which the individual is or was last employed and that supplies materials or services necessary to the continued and usual operation of the premises at which the individual is or was last employed. An individual disqualified under the provisions of this subsection continues to be disqualified after the labor dispute has ceased to be in active progress for the period of time that is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment. (2013-2, s. 5; 2013-224, s. 19.)

**§ 96-14.8. Military spouse relocation and domestic violence are good causes for leaving.**

An individual is not disqualified for benefits for leaving work for one of the reasons listed in this section. Benefits paid on the basis of this section are not chargeable to the employer's account:

- (1) Military spouse relocation. – Leaving work to accompany the individual's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another.
- (2) Domestic violence. – Leaving work for reasons of domestic violence if the individual reasonably believes that the individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family. For purposes of this subdivision, an individual is a victim of domestic violence if one or more of the following applies:
  - a. The individual has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes.
  - b. There is evidence of domestic violence, sexual offense, or stalking. Evidence of domestic violence, sexual offense, or stalking may include any one or more of the following:
    1. Law enforcement, court, or federal agency records or files.
    2. Documentation from a domestic violence or sexual assault program if the individual is alleged to be a victim of domestic violence or sexual assault.
    3. Documentation from a religious, medical, or other professional from whom the individual has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking.
  - c. The individual has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the individual or upon a minor child with or in the custody of the individual by another individual who has or has had a familial relationship with the individual or minor child. (2013-2, s. 5; 2013-224, s. 19.)

**§ 96-14.9. Weekly certification.**

(a) Requirements. – An individual's eligibility for a weekly benefit amount is determined on a week-to-week basis. An individual must meet all of the requirements of this section for each weekly benefit period. An individual who fails to meet one or more of the requirements is ineligible to receive benefits until the condition causing the ineligibility ceases to exist:

- (1) File a claim for benefits.
- (2) Report as requested by the Division and present valid photo identification meeting the requirements of subsection (k) of this section.
- (3) Meet the work search requirements of subsection (b) of this section.

(b) Work Search Requirements. – The Division must find that the individual meets all of the following work search requirements:

- (1) The individual is able to work.
- (2) The individual is available to work.
- (3) The individual is actively seeking work.
- (4) The individual accepts suitable work when offered.

(c) Able to Work. – An individual is not able to work during any week that the individual is receiving or is applying for benefits under any other state or federal law based on the individual's temporary total or permanent total disability.

(d) Available to Work. – An individual is not available to work during any week that one or more of the following applies:

- (1) The individual tests positive for a controlled substance. An individual tests positive for a controlled substance if all of the conditions of this subdivision apply. An employer must report an individual's positive test for a controlled substance to the Division:
  - a. The test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes.
  - b. The test is required as a condition of hire for a job.
  - c. The job would be suitable work for the individual.
- (2) The individual is incarcerated or has received notice to report to or is otherwise detained in a state or federal jail or penal institution. This subdivision does not apply to an individual who is incarcerated solely on a weekend in a county jail and who is otherwise available for work.
- (3) The individual is an alien and is not in satisfactory immigration status under the laws administered by the United States Department of Justice, Immigration and Naturalization Service.
- (4) The individual is on disciplinary suspension for 30 or fewer days based on acts or omissions that constitute fault on the part of the employee and are connected with the work.

(e) Actively Seeking Work. – The Division's determination of whether an individual is actively seeking work is based upon the following:

- (1) The individual is registered for employment services, as required by the Division.
- (2) The individual has engaged in an active search for employment that is appropriate in light of the employment available in the labor market and the individual's skills and capabilities.

- (3) The individual has made at least three job contacts with potential employers during the week.
  - (4) The individual has maintained a record of the individual's work search efforts. The record must include the potential employers contacted, the method of contact, and the date contacted. The individual must provide the record to the Division upon request.
- (f) **Suitable Work.** – The Division's determination of whether an employment offer is suitable must vary based upon the individual's length of unemployment as follows:
- (1) During the first 10 weeks of a benefit period, the Division may consider all of the following:
    - a. The degree of risk involved to the individual's health, safety, and morals.
    - b. The individual's physical fitness and prior training and experience.
    - c. The individual's prospects for securing local work in the individual's customary occupation.
    - d. The distance of the available work from the individual's residence.
    - e. The individual's prior earnings.
  - (2) During the remaining weeks of a benefit period, the Division must consider any employment offer paying one hundred twenty percent (120%) of the individual's weekly benefit amount to be suitable work.
- (g) **Job Attachment.** – An individual who is partially unemployed and for whom the employer has filed an attached claim for benefits has satisfied the work search requirements for any given week in the benefit period associated with the attached claim if the Division determines the individual is available for work with the employer that filed the attached claim.
- (h) **Job Training.** – An individual who is otherwise eligible may not be denied benefits for any week because of the application to any such week of requirements relating to availability for work, active search for work, or refusal to accept work if the individual is attending a training program approved by the Division.
- (i) **Federal Labor Standards.** – An otherwise eligible individual may not be denied benefits for a given week if the Division determines the individual refused to accept new work for one or more of the following reasons:
- (1) The position offered is vacant due directly to a strike, lockout, or other labor dispute.
  - (2) The remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
  - (3) The individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization as a condition of employment.
- (j) **Trade Act of 1974.** – An otherwise eligible individual may not be denied benefits for any week because the individual is in training approved under section 236(a)(1) of the Trade Act of 1974, nor may the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law or of any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subsection, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment,

as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(k) Photo Identification. – The individual must present the Division one of the following documents bearing the individual's photograph:

- (1) A drivers license, learner's permit, provisional license, or nonoperator's identification card issued by North Carolina, another state, the District of Columbia, United States territory, or United States commonwealth.
- (2) A United States passport.
- (3) A United States military identification card.
- (4) A Veterans Identification Card issued by the United States Department of Veterans Affairs.
- (5) A tribal enrollment card issued by a federally recognized tribe.
- (6) Any other document that the Division determines adequately identifies the individual and that is issued by the United States, any state, the District of Columbia, United States territory, or United States commonwealth.
- (7) A traveler card issued by the U.S. Department of Homeland Security, such as the NEXUS SENTRI and FAST CARDS.

(l) Federal Disaster Declaration. – An individual who is unemployed due directly to a disaster covered by a federal disaster declaration has satisfied the work search requirements for any given week in the benefit period unless the Division requires the individual to conduct a work search. (2013-2, s. 5; 2013-224, ss. 14, 19; 2013-391, s. 5; 2015-238, ss. 2.2(a), 2.6; 2017-8, s. 1(d); 2018-94, s. 3(a).)

#### **§ 96-14.10. Disciplinary suspension.**

The disciplinary suspension of an employee for 30 or fewer consecutive calendar days does not constitute good cause for leaving work. An individual who is on suspension is not available for work and is not eligible for benefits for any week during any part of the disciplinary suspension. If the disciplinary suspension exceeds 30 days, the individual is considered to have been discharged from work because of the acts or omissions that caused the suspension and the issue is whether the discharge was for disqualifying reasons. During the period of suspension of 30 or fewer days, the individual is considered to be attached to the employer's payroll, and the issue of separation from work is held in abeyance until a claim is filed for a week to which this section does not apply. (2013-2, s. 5; 2013-224, ss. 15, 19.)

#### **§ 96-14.11. Disqualification for the remaining weeks of the benefit period.**

(a) Duration. – An individual may be disqualified from receiving benefits for the remaining weeks of the claim's duration if one or more subsections of this section apply. The period of disqualification under this section begins with the first day of the first week after the disqualifying act occurs.

(b) Suitable Work. – An individual is disqualified for any remaining benefits if the Division determines that the individual has failed, without good cause, to do one or more of the following:

- (1) Apply for available suitable work when so directed by the employment office of the Division.
- (2) Accept suitable work when offered.



- (3) Return to the individual's customary self-employment when so directed by the Division.

(c) Recall After Layoff. – An individual is disqualified for any remaining benefits if it is determined by the Division that the individual is unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for an employer under one or more of the following circumstances:

- (1) The individual was recalled within four weeks after a layoff. As used in this subdivision, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer.
- (2) The individual was recalled in a week in which the work search requirements were satisfied under G.S. 96-14.9(g) due to job attachment. (2013-2, s. 5; 2013-224, ss. 19, 20(e); 2013-391, s. 6.)

#### **§ 96-14.12. Limitations on company officers and spouses.**

(a) Disqualification for Benefits. – An individual is disqualified for benefits if the Division determines either of the following:

- (1) The individual is customarily self-employed and can reasonably return to self-employment.
- (2) The individual or the individual's spouse is unemployed because the individual's ownership share of the employer was voluntarily sold and, at the time of the sale, one or more of the following applied:
  - a. The employer was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation.
  - b. The employer was a partnership, limited or general, and the individual was a limited or general partner.
  - c. The employer was a limited liability company and the individual was a member.
  - d. The employer was a proprietorship, and the individual was the proprietor.

(b) Duration of Benefits. – This subsection applies to an individual and the spouse of an individual who is unemployed based on services performed for a corporation in which the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation. The maximum number of weeks an individual or an individual's spouse may receive benefits is six weeks. (2013-2, s. 5; 2013-224, s. 19; 2015-238, s. 2.8(c).)

#### **§ 96-14.13. Limitation on benefits due to lump sum payments.**

An individual is disqualified from receiving benefits for any week for which the individual receives any sum from the employer pursuant to an order of a court, the National Labor Relations Board, or another adjudicative agency or by private agreement, consent, or arbitration for loss of pay by reason of discharge. When the employer pays a lump sum that covers a period of more than one week, the amount paid is allocated to the weeks in the period on a pro rata basis as determined by the Division. If the amount prorated to a week would, if it had been earned by the individual during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S.

96-14.2, the individual is entitled to receive the reduced payment if the individual is otherwise eligible for benefits.

Benefits paid for weeks of unemployment for which back pay awards or other similar compensation are made constitutes an overpayment of benefits. The employer must deduct the overpayment from the award prior to payment to the employee and must send the overpayment to the Division within five days of the payment for application against the overpayment. Overpayments not remitted to the Division are subject to the same collection procedures as contributions. The removal of charges made against the employer's account as a result of the previously paid benefits applies to the calendar year in which the Division receives the overpayment. (2013-2, s. 5; 2013-224, s. 19.)

#### **§ 96-14.14. Extended benefits.**

(a) [General Provisions. – ] Extended benefits payable under sub-subdivision (b)(5)a. of this section shall be paid as required under the Federal-State Extended Unemployment Compensation Act of 1970. Extended benefits payable under sub-subdivision (b)(5)a. of this section are not required under federal law and may be paid only if the federal government funds one hundred percent (100%) of the costs of providing them. Extended benefits are payable in the manner prescribed by this section.

(b) Definitions. – As used in this section, unless the context clearly requires otherwise:

- (1) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.
- (2) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:
  - a. Has received, prior to such week, all of the regular benefits that were available to him under this Chapter or any other State law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such week;  
Provided, that, for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions in G.S. 96-16; or
  - b. His benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and
  - c.1. Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and

- such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and
2. Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.
- (3) "Extended benefit period" means a period which:
- a. Begins the third week after a week for which there is an "on" indicator; and
  - b. Ends with either of the following weeks, whichever occurs later:
    1. The third week after the first week for which there is an "off" indicator; or
    2. The 13th consecutive week of such period.
- Provided, that no extended benefit period may begin before the 14th week following the end of a prior extended benefit period which was in effect with respect to this State.
- (4) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.
- (5) There is an "on indicator" for this State for a week if the Division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediate preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:
- a. Equalled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, and equalled or exceeded five percent (5%), or
  - b. Equalled or exceeded six percent (6%), or
  - c. With respect to benefits for weeks of unemployment in North Carolina beginning after May 1, 2002:
    1. The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds a six and one-half percent (6.5%), and
    2. The average rate of total unemployment in the State (seasonally adjusted), as determined by the United States Secretary of Labor, for the three-month period referred to in [sub-]sub-subdivision c.1. of this subdivision, equals or exceeds one hundred ten percent (110%) of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.
    3. Expired effective January 1, 2013, pursuant to Session Laws 2011-145, s. 6.16(d), as amended by Session Laws 2012-134, s. 1(c).

- d. There is a State "off indicator" for a week with respect to sub-subdivision c. of this subdivision, only if, for the period consisting of such week and the immediately preceding 12 weeks, the option specified in sub-subdivision c. does not result in an "on indicator".
- e. Total extended benefit amount –
  - 1. The total extended benefit amount payment to any eligible individual with respect to the applicable benefit year shall be the least of the following amounts:
    - I. Fifty percent (50%) of the total amount of regular benefits which were payable to the individual under this Chapter in the individual's applicable benefit year; or
    - II. Thirteen times the individual's weekly benefit amount that was payable to the individual under this Chapter for a week of total unemployment in the applicable benefit year.
  - 2. I. Effective with respect to weeks beginning in a high unemployment period, [sub-]sub-subdivision e.1. of this subdivision shall be applied by substituting:
    - A. "Eighty percent (80%)" for "fifty percent (50%)" in [sub-sub-]sub-subdivision e.1.I., and
    - B. "Twenty" for "thirteen" in [sub-sub-]sub-subdivision e.1.II.
  - II. For purposes of [sub-sub-]sub-subdivision 2.I., the term "high unemployment period" means any period during which an extended benefit period would be in effect if sub-subdivision c. of this subdivision were applied by substituting "eight percent (8%)" for "six and one-half percent (6.5%)".
  - 3. Expired effective January 1, 2013, pursuant to Session Laws 2011-145, s. 6.16(d), as amended by Session Laws 2012-134, s. 1(c).
- (6) There is an "off indicator" for this State for a week if the Division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:
  - a. Was less than one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, and was less than six percent (6%), or
  - b. Was less than five percent (5%).
- (7) "Rate of insured unemployment," for the purposes of subparagraphs [subdivisions] (5) and (6) of this subsection, means the percentage derived by dividing:
  - a. The average weekly number of individuals filing claims for regular compensation in this State for weeks of unemployment with respect to the most recent 13 consecutive-week period, as determined by the

Division, on the basis of its reports to the United States Secretary of Labor, by

- b. The average monthly employment covered under this Chapter for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.
- (8) "Regular benefits" means benefits payable to an individual under this Chapter or any other State law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85) other than extended benefits.
- (9) "State law" means the unemployment insurance law of any state approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code.

(c) Effect of State Law Provisions Relating to Regular Benefits on Claims for, and for Payment of, Extended Benefits. – Except when the result would be inconsistent with the other provisions of this section and in matters of eligibility determination, as provided by rules adopted by the Division, the provisions of this Chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(d) Eligibility Requirements for Extended Benefits. – An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Division finds that with respect to such week:

- (1) The individual is an "exhaustee" as defined in subsection [subdivision] (b)(2).
- (2) The individual has satisfied the requirements of this Chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits. Provided, however, that for purposes of disqualification for extended benefits for weeks of unemployment beginning after March 31, 1981, the term "suitable work" means any work which is within the individual's capabilities to perform if: (i) the gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in section 501(C)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and (ii) the gross wages payable for the work equal the higher of the minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended (without regard to any exemption), or the State minimum wage; and (iii) the work is offered to the individual in writing and is listed with the State employment service; and (iv) the considerations contained in G.S. 96-14.9(f) for determining whether or not work is suitable are applied to the extent that they are not inconsistent with the specific requirements of this subdivision; and (v) the individual cannot furnish evidence satisfactory to the Division that his prospects for obtaining work in his customary occupation within a reasonably short period of time are good, but if the individual submits evidence which the Division deems satisfactory for this purpose, the determination of whether or not work is suitable with respect to such individual shall be made in accordance with G.S. 96-14.9(f) without regard to the definition contained in this subdivision. Provided, further, that no work shall be deemed to be suitable work for an individual which does not accord with the

labor standard provisions set forth in this subdivision, but the employment service shall refer any individual claiming extended benefits to any work which is deemed suitable hereunder. Provided, further, that any individual who has been disqualified for voluntarily leaving employment, being discharged for misconduct or substantial fault, or refusing suitable work under G.S. 96-14.11 and who has had the disqualification terminated, shall have such disqualification reinstated when claiming extended benefits unless the termination of the disqualification was based upon employment subsequent to the date of the disqualification.

- (3) After March 31, 1981, he has not failed either to apply for or to accept an offer of suitable work, as defined in G.S. 96-14.14(d)(2), to which he was referred by an employment office of the Division, and he has furnished the Division with tangible evidence that he has actively engaged in a systematic and sustained effort to find work. If an individual is found to be ineligible hereunder, he shall be ineligible beginning with the week in which he either failed to apply for or to accept the offer of suitable work or failed to furnish the Division with tangible evidence that he has actively engaged in a systematic and sustained effort to find work and such individual shall continue to be ineligible for extended benefits until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times his weekly benefit amount.
- (4) Pursuant to section 202(a)(7) of the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373), as amended by section 202(b)(1) of the Unemployment Compensation Amendments of 1992 (Public Law 102-318), for any week of unemployment beginning after March 6, 1993, and before January 1, 1995, the individual is an exhaustee as defined by federal law and has satisfied the requirements of this Chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits. Provided, the terms and conditions of State law that apply to claims for regular compensation and to the payment thereof shall apply to claims for extended benefits and to the payment thereof.
- (5) An individual shall not be eligible for extended compensation unless the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages, as determined by a calculation of base period wages based upon total hours worked during each quarter of the base period and the hourly wage rate for each quarter of the base period. For the purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or one and one-half times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest.

(e) Weekly Extended Benefit Amount. – The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. For any individual who was paid benefits during the applicable benefit year in accordance with more than one weekly

benefit amount, the weekly extended benefit amount shall be the average of such weekly benefit amounts rounded to the nearest lower full dollar amount (if not a full dollar amount). Provided, that for any week during a period in which federal payments to states under Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, P.L. 91-373, are reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 99-177, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. The reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower full dollar amount.

- (f) (1) Total Extended Benefit Amount. – Except as provided in subdivision (2) hereof, the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:
  - a. Fifty percent (50%) of the total amount of regular benefits which were payable to him under this Chapter in his applicable benefit year; or
  - b. Thirteen times his weekly benefit amount which was payable to him under this Chapter for a week of total unemployment in the applicable benefit year.

Provided, that during any fiscal year in which federal payments to states under Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, P.L. 91-373, are reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 99-177, the total extended benefit amount payable to an individual with respect to his applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions under G.S. 96-14.14(e) and the weekly amounts paid to the individual.

- (2) Notwithstanding any other provisions of this Chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this subdivision, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.
- (g) Beginning and Termination of Extended Benefit Period. –
    - (1) Whenever an extended benefit period is to become effective in this State as a result of an "on" indicator, or an extended benefit period is to be terminated in this State as a result of an "off" indicator, the Division shall make an appropriate public announcement; and
    - (2) Computations required by the provisions of subsection (a)(6) [subdivision (b)(7)] shall be made by the Division, in accordance with regulations prescribed by the United States Secretary of Labor.

(h) Prior to January 1, 1978, any extended benefits paid to any claimant under G.S. 96-14.14 shall not be charged to the account of the base period employer(s) who pay taxes as required by this Chapter. However, fifty percent (50%) of any such benefits paid shall be allocated as provided in G.S. 96-11.2 (except that G.S. 96-11.3 shall not apply), and the applicable amount

shall be charged to the account of the appropriate employer paying on a reimbursement basis in lieu of taxes.

On and after January 1, 1978, the federal portion of any extended benefits shall not be charged to the account of any employer who pays taxes as required by this Chapter but the State portion of such extended benefits shall be:

- (1) Charged to the account of such employer; or
- (2) Not charged to the account of the employer under the provisions of G.S. 96-11.3.

All state portions of the extended benefits paid shall be charged to the account of governmental entities or other employers not liable for FUTA taxes who are the base period employers.

(i) Notwithstanding the provisions of G.S. 96-9.6, G.S. 96-14.14(h), or any other provision of this Chapter, any extended benefits paid which are one hundred percent (100%) federally financed shall not be charged in any percentage to any employer's account.

(j) For weeks of unemployment beginning on or after June 1, 1981, a claimant who is filing an interstate claim under the interstate benefit payment plan shall be eligible for extended benefits for no more than two weeks when there is an "off indicator" in the state where the claimant files. (Ex. Sess. 1936, c. 1, s. 3; 1937, c. 448, s. 1; 1939, c. 27, ss. 1-3, 14; c. 141; 1941, c. 108, s. 1; c. 276; 1943, c. 377, ss. 1-4; 1945, c. 522, ss. 24-26; 1947, c. 326, s. 21; 1949, c. 424, ss. 19-21; 1951, c. 332, ss. 10-12; 1953, c. 401, ss. 17, 18; 1957, c. 1059, ss. 12, 13; c. 1339; 1959, c. 362, ss. 12-15; 1961, c. 454, ss. 17, 18; 1965, c. 795, ss. 15, 16; 1969, c. 575, s. 9; 1971, c. 673, ss. 25, 26; 1973, c. 1138, ss. 3-7; 1975, c. 2, ss. 1-5; 1977, c. 727, s. 52; 1979, c. 660, ss. 18, 19; 1981, c. 160, ss. 17-23; 1981 (Reg. Sess., 1982), c. 1178, ss. 3-14; 1983, c. 585, ss. 12-16; c. 625, ss. 1, 7; 1985, c. 552, s. 9; 1985 (Reg. Sess., 1986), c. 918; 1987, c. 17, s. 8; 1993, c. 122, s. 2; 1993 (Reg. Sess., 1994), c. 680, ss. 1-3; 1995 (Reg. Sess., 1996), c. 646, s. 25(a); 1997-456, s. 27; 1999-340, ss. 4, 5; 2001-414, ss. 42, 43, 44; 2002-143, ss. 1, 1.1; 2011-145, s. 6.16(a), (b); 2011-401, s. 2.12; 2012-134, s. 1(c)-(e); 2013-2, s. 6; 2013-224, ss. 19, 20(f)-(j).)